

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

BRYON NEVIUS,)	
)	Case No. 2:13-cv-04228-NKL
Petitioner,)	
)	
v.)	
)	
JULIE TOMLINSON and)	
INTERNAL REVENUE SERVICE,)	
)	
Respondents.)	
)	

**RESPONDENTS' MOTION TO EXTEND TIME TO FILE A
RESPONSIVE PLEADING**

On behalf of the named respondents in this case, the Internal Revenue Service and IRS Special Agent Julie Tomlinson (“Tomlinson”), the United States seeks up to and including February 26, 2014, to file a responsive pleading. *See* Fed. R. Civ. P. 12(a)(2) and (a)(3).

Background

On October 18, 2013, Tomlinson issued an IRS summons to PNC Bank in order to secure relevant information and records necessary to determine petitioner Bryon Nevius’s tax liabilities. On November 6, 2013, Nevius filed the above-captioned Petition to Quash Summons. In it, he frivolously asks the Court to permanently enjoin the IRS from “directly or indirectly” contacting him regarding any matter related to “Individual Income Tax laws.” (Docket No. 1, p. 23.) In addition, Nevius evidently seeks unspecified damages from Tomlinson as a result of her serving an IRS summons on his bank. (*Id.* at 24.)

Tomlinson and the IRS were served with a summons and a copy of the complaint on December 27, 2013. (Docket Nos. 5 and 6.) According to the Court’s docket, a responsive pleading is due on or before January 17, 2014. (*Id.*)

The United States Seeks Additional Time to File a Responsive Pleading

Although petitioner names the IRS as a respondent in this case, this action should be construed as one brought against the United States, because petitioner is attempting to stop the IRS from taking actions to ascertain his tax liabilities. *See Coleman v. Espy*, 986 F.2d 1184, 1189 (8th Cir. 1993) (“A suit against the sovereign is one where the judgment sought would expend the “public treasury, restrain the government from acting, or compel it to act.””). The United States is entitled to 60 days to respond to a pleading, and therefore seeks up to and including February 26, 2014, to respond on behalf of respondent IRS.

To the extent that petitioner seeks “damages” from Tomlinson for serving a third-party summons on his bank, “a suit against a government employee in his official capacity is to be treated as a suit against the entity.” *Coleman v. Espy*, 986 F.2d 1184, 1189 (8th Cir. 1993); *accord Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (“[A] suit against IRS employees in their official capacity is essentially a suit against the United States.”); *English v. Krubsack*, 371 F. Supp. 2d 1198, 1200 (E.D. Cal. 2005) (dismissing IRS revenue agent and substituting United States as real party in interest in action to quash IRS summons). Accordingly, the United States is representing Tomlinson, and seeks additional time to file a responsive pleading on her behalf pursuant to Fed. R. Civ. P. 12(a).

//

//

//

//

//

//

WHEREFORE, the United States respectfully requests that this Court grant the United States up to and including February 26, 2014, in which to file a responsive pleading in this case.

Dated: January 17, 2014.

Respectfully submitted,

TAMMY DICKINSON
United States Attorney

KATHRYN KENEALLY
Assistant Attorney General, Tax Division

s/Jessica S. Reimelt
JESSICA S. REIMELT (Maryland bar)
Trial Attorney, Tax Division
U.S. Department of Justice
Ben Franklin Station, P.O. Box 7238
Washington, DC 20044
Phone: (202) 307-2176
Fax: (202) 514-6770
E-mail: jessica.s.reimelt@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2014, I served the foregoing by United States first-class mail upon the following:

Byron Nevius
21355 Highway 179
Jamestown, MO 65046

s/ Jessica S. Reimelt
JESSICA S. REIMELT